

Oct. 9. 2020 6:15PM

No. 0118 P. 60/64

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

-against-

PHILIP A. KENNER, *et al.*,

Defendants

FILED  
IN CLERK'S OFFICE  
U.S. DISTRICT COURT E.D.N.Y.

★ OCT 09 2020 ★

LONG ISLAND OFFICE

Criminal Docket No. 13-0607 (JFB)

**MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR LEAVE  
TO FILE UNDER SEAL OF DANSKE BANK A/S, LONDON BRANCH**

Danske Bank A/S, London Branch ("Danske") moves this Court for leave to file under seal the following documents attached to the Declaration of George Kostolampros in Support of Danske's Motion to File Under Seal: (1) Exhibit 45 of the Declaration of George Kostolampros in Support of Danske's Motion for Summary Judgment (the "Kostolampros MSJ Declaration") (Dkt Nos. 854-5) ("MSJ Exhibit");<sup>1</sup> (2) Exhibits 1-6 (the "Daniel Exhibits") accompanying the Supplemental Declaration of David Daniel in Further Support of Danske's Motion for Summary Judgment; (3) Exhibit 1 (the "Atkinson Exhibit") accompanying the Declaration of Jovan Atkinson in Further Support of Danske's Motion for Summary Judgment; and (4) Exhibits A-D accompanying the Declaration of Jennifer Britt of Trimont Real Estate Advisors, LLC (the "Britt Exhibits") (collectively, the "Scaled Exhibits"), as follows:

<sup>1</sup> MSJ Exhibit 45 attached to the Kostolampros MSJ Declaration was inadvertently filed publicly on the Court's docket. Danske respectfully requests that this document be filed under seal as well and removed from the Court's docket.

Danske asks this Court to grant leave for Danske to file under seal the Scaled Exhibits, which contain sensitive, confidential financial information. This sensitive and confidential information includes loan account numbers, bank account numbers, and account balance statements. Courts routinely seal information where a business's sensitive, confidential financial information is at issue and those privacy interests overcome the presumption of access to judicial documents. Danske's interests in preserving the confidentiality of this information overcomes the public's general interest in the matters at issue before this Court. Accordingly, this Court should allow Danske to file the Scaled Exhibits under seal.

#### ARGUMENT

Courts within the Second Circuit routinely seal information that will expose a company's sensitive and confidential business and financial information. *See Bunkers Int'l v. Orient Oil*, 08 Civ. 10905 (PKC), 2008 U.S. Dist. LEXIS 117548, at \*3-4 (S.D.N.Y. Dec. 23, 2008) (granting motion to seal documents including bank account numbers and wire transfer information); *Savarese v. Cirrus Design Corp.*, No. 09 Civ. 1911 (JGK), 2010 U.S. Dist. LEXIS 21690, at \*2 (S.D.N.Y. Mar. 8, 2010) ("It is plain that some portions of the documents and proceedings must be filed under seal, including the names of minor children and bank account information."); *Andersen v. N. Shore Long Island Jewish Healthcare System's Zucker Hillside Hosp.*, CV 12-1049 (JFB)(ETB), 2013 U.S. Dist. LEXIS 29972 (E.D.N.Y. Jan. 23, 2013) (granting motion to seal documents containing a patient's signature, passport number, and social security number); *see also McCrackan v. Varisma Sys.*, No. 6:14-cv-06248(MAT), 2017 U.S. Dist. LEXIS 157718 (W.D.N.Y. Sept. 26, 2017) (granting motion to seal a company's internal, non-public financial information); *Godson v. Eltman, Eltman & Cooper, P.C.*, 285 F.R.D. 255, 262 (W.D.N.Y. 2012) ("[B]ecause Defendants seek to file potentially sensitive financial information, their Motion to Seal . . . is GRANTED."). Additionally, the "privacy interests of innocent third parties . . .

Oct. 9. 2020 6:16PM

No. 0118 P. 62/64

should weigh heavily in a court's balancing equation 'between the presumption of access and a request to seal,'" *SEC v. Ahmed*, Civ. No. 3:15cv675 (JBA), 2018 U.S. Dist. LEXIS 152504, at \*8 (D. Conn. Sept. 6, 2018), "particularly when the '[f]inancial records of a wholly owned business' are at issue," *Adler v. Solar Power, Inc.*, No. 16 CV 1635-LTS-GWG, 2019 U.S. Dist. LEXIS 143089, at \*2-3 (S.D.N.Y. Aug. 22, 2019) (internal citations omitted) (alteration in original).

Here, the Sealed Exhibits include sensitive, proprietary and confidential financial and loan information, including account numbers, calculations, and the way in which Danske maintains its statements. More specifically, the Sealed Exhibits consist of: (1) statement of account notices issued by Danske, which contain account numbers and balance information; and (2) account transaction statements issued by Trimont Real Estate Advisors, LLC ("Trimont"), which list account numbers and funds advanced under Facilities A, B, and C. The Sealed Exhibits contain information that is not publicly available and that constitute sensitive, private commercial and financial information that, if publicly disseminated, would cause Danske commercial harm. See *KeyBank Nat'l Ass'n v. Element Transp. LLC*, No. 16 Civ. 8958, 2017 WL 384875, at \*1 (S.D.N.Y. Jan. 16, 2017) (granting plaintiff's motion to seal an exhibit attached to the complaint where it contained "highly proprietary nonparty financial information"); *Broadhurst Invs. LP v. Bank of N.Y. Mellon*, No. 09 Civ. 1154 (PKC), 2010 U.S. Dist. LEXIS 79668, at \*15-16 (S.D.N.Y. Aug. 2, 2010) (granting motion to seal documents containing bank account numbers and other financial information); *McCracken*, 2017 U.S. Dist. LEXIS 157718 at \*13-14 (granting motion to seal a company's private financial data, including cost schedules and internal financial records, and noting that "New York courts have recognized that this type of financial information is appropriately subject to a sealing order"); *Competitive*

*Techs. v. Marcovitch*, No. 3:07cv1327, 2008 U.S. Dist. LEXIS 135671 (D. Conn. Jan 29, 2008) (denying motion to seal and finding that “[n]ames and addresses are not in this context particularly confidential or sensitive information. *Defendants have not been ordered to disclose confidential financial information, such as bank account numbers, of non-party transferees*”). Moreover, Britt Exhibits B-D have already been filed under seal with the Kostolampros MSJ Declaration. *See* Dkt. Nos. 850-10, 854-2, 861-7.<sup>2</sup> In order to protect Danske’s confidential business information, the Court should grant Danske’s motion to file these documents under seal once again. *See United States v. Ross*, No. 3:15-cr-154 (MPS), 2016 U.S. Dist. LEXIS 194710 (D. Conn. June 28, 2016) (“Because the documents contain detailed financial information, including account numbers, *they shall be filed and maintained under seal until further order of this Court.*” (emphasis added)).

Balancing the public’s general interest in disclosure against Danske’s specific interest in preserving its sensitive, confidential financial information makes clear that Danske’s interests far outweigh the public’s more general interests. *See Bunkers Int’l*, 2008 U.S. Dist. LEXIS 117548, at \*3-4 (holding that “bank account numbers and wire transfer information” should be filed under seal because “[t]here is very little need for public access to such information and the potential for harm through bank fraud or identity theft is great”); *Dollar Phone Corp.*, 2012 U.S. Dist. LEXIS 202687, at \*5 (“The prevention of potential fraud constitutes a competing consideration often sufficient to rebut the presumption of access”); *Broadhurst Invs. LP*, 2010 U.S. Dist. LEXIS 79668, at \*15-16.

### CONCLUSION

---

<sup>2</sup> Exhibit A to the Britt Declaration is the same as MSJ Exhibit 45. As set forth in Footnote 1 above, this document was inadvertently filed publicly on the Court’s docket. Danske requests that this exhibit be removed from the docket and filed under seal.

For the foregoing reasons, Danske respectfully requests that this Court grant its motion for leave to file under seal and grant such other and further relief that this Court deems just and proper.

Dated: Washington DC  
October 9, 2020

Respectfully submitted,

By: /s/ George Kostolampros

George Kostolampros  
Venable LLP  
600 Massachusetts Ave. NW,  
Washington, DC 20001  
Tel.: (202) 344-4426  
Fax: (202) 344-8300  
Email: GKostolampros@Venable.com

Dorcen Martin  
Venable LLP  
1270 Avenue of the Americas, 24th Floor  
New York, NY 10020  
Tel.: (212) 983-1179  
Fax: (212) 307-5598  
Email: DSMartin@Venable.com

*Attorneys for Danske Bank A/S, London  
Branch*